IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl.Misc.No.17106-M of 2007

Date of Decision: 16.4.2007

Sunil Kumar @ Sonu .....Petitioner

Versus

State of Haryana .....Respondent

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.SS Siao, Advocate
for the petitioner.

Mr.Himanshu Raj, AAG Haryana.

S.D.ANAND, J.

The present petition, for the grant of regular bail to petitioner Sunil Kumar, deserves rejection for the reasons noticed hereunder:

The petitioner is grand son of deceased Sarwan Lal, who (deceased) had executed a testamentary disposition in favour of petitioner's mother and her two sisters on 16.9.2005. The petitioner wanted the deceased to lend to him a sum of Rs.10,000/-. Though the deceased was willing to oblige but he wanted that petitioner's mother should stand guarantee for that payment. Perhaps that was not acceptable to the petitioner, who nourished a grievance against deceased. On the relevant date, he and a friend of his by the name of Vicky were last seen near the place where the deceased was residing separately from the family. The deceased was found dead later on that very day when another relation went to deliver dinner to him.

The evidence against the petitioner consists of the 'last seen

evidence', the recovery of weapon of offence at his instance in pursuance of his disclosure statement and the fact that blood was found on the weapon of offence.

Learned counsel for the petitioner argues that the petitioner deserves bail as his co-accused Vicky has already been enlarged on bail by the Sessions Judge, Fatehabad. He further argues that no independent witness had attested the recovery memo vide which the weapon of offence had been allegedly taken into possession by the police. It is also argued that the petitioner had no reasons to do away with the deceased particularly when former's mother was one out of the three beneficiaries under a registered will executed by the latter (deceased).

Though it cannot be disputed that the 'last seen evidence' is a weak type of evidence, it also cannot be denied that it is an acceptable evidence if the other pieces of evidence are available to buttress it. In the present case, the weapon of offence was recovered at the instance of the petitioner in pursuance of a disclosure statement made by him. Blood was found on that weapon by the FSL. Though, origin of blood could not be established as the matter had dis-integrated, it cannot be denied that the blood was indeed found on the weapon of offence (a screw driver), on 9.10.2006 when it was examined at the Laboratory.

The mere release of a co-accused is neither here nor there because the former was not related to the deceased and an entirely different role had been attributed to him in the prosecution plea.

Reliance placed by the learned counsel for the petitioner upon Dev Prakash Versus State of M.P. , 2004(3) RCR (Criminal) 443, State of U.P. Versus Arun Kumar Gupta, 2003(1) RCR (Criminal) 385 and

Jayendra Saraswathi Swamigal Versus State of Tamil Nadu, 2005(1) J.T. 361, is mis-conceived inasmuch as those cases were based upon their own facts and circumstances and there is no commonness of allegations as between those cases and the case before this Court.

The present is not a fit case for the release of the petitioner – accused on bail. Dismissed.

(S. D. ANAND)
JUDGE

April 16, 2007
SRM